

The Senate Public Safety Committee offered the following substitute to SB 53:

A BILL TO BE ENTITLED

AN ACT

To amend Titles 10, 16, and 40 of the Official Code of Georgia Annotated, relating to commerce and trade, crimes and offenses, and motor vehicles and traffic, respectively, so as to provide for comprehensive regulation of theft of regulated metal property; to provide for the offense of advertising for the purchase of regulated metal property in a manner which violates any provisions of Article 14 of Chapter 1 of Title 10; to provide for criminal penalties; to provide for the publication of second or subsequent convictions and procedure therefor; to provide for forfeiture of certain property and procedure therefor; to provide for the suspension of the drivers' licenses of persons convicted for certain offenses related to the theft of regulated metal property; to provide for restoration of the drivers' licenses under certain conditions; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is amended by adding a new Code section to read as follows:

"10-1-356.1.

(a) It shall be unlawful for any person to advertise, whether in a periodical, by television, by radio, or by any other public medium or by any private means, including letters, circulars, handbills, and oral statements, that such person will purchase or will arrange for or cause to be purchased any regulated metal property in a manner which violates any provision of this article.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not more than \$5,000.00 or by imprisonment for not less than one nor more than five years, or both."

SECTION 2.

Said title is further amended by revising Code Section 10-1-357, relating to penalties for violations of the article, by adding a new a new subsection to read as follows:

"(c)(1) The clerk of the court in which a person is convicted a second or subsequent time of any violation of this Code section within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long; shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, the name and address of the convicted person, the date, time, and place of arrest, and the disposition of the case; and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed \$25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith."

SECTION 3.

Said title is further amended by adding a new Code section to read as follows:

"10-1-357.1.

(a) As used in this Code section, the term 'crime' means:

(1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section 16-8-7 if the subject of the theft was regulated metal property;

(2) Criminal damage to property in the first degree in violation of paragraph (2) of subsection (a) of Code Section 16-7-22; or

(3) A criminal violation of this article.

(b) All motor vehicles, tools, and weapons which are used or intended for use in any manner in the commission of or to facilitate the commission of a crime are subject to forfeiture under this Code section, but:

(1) No motor vehicle used by any person as a common carrier in the transaction of business as a common carrier shall be subject to forfeiture under this Code section unless it appears that the owner or other person in charge of the motor vehicle is a consenting party or privy to the commission of a crime;

(2) No motor vehicle shall be subject to forfeiture under this Code section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent, and any co-owner of a motor vehicle without knowledge of or consent to the act or omission shall be protected to the extent of the interest of such co-owner; and

(3) A forfeiture of a motor vehicle encumbered by a bona fide security interest shall be subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission.

(c) Property subject to forfeiture under this Code section may be seized by any law enforcement officer of this state or any political subdivision thereof who has the power to make arrests upon process issued by any court having jurisdiction over the property. Seizure without process or warrant may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of this state in a criminal injunction or forfeiture proceeding based upon this Code section;
or

(3) If probable cause exists that the vehicle, tool, or weapon is subject to seizure.

(d) Property taken or detained under this Code section shall not be subject to replevin but shall be deemed to be in the custody of the superior court of the county wherein the seizure was made or in the custody of the superior court of the county where it can be proven that the crime was committed, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this Code section, law enforcement officers seizing such property shall:

(1) Place the property under seal;

(2) Remove the property to a place designated by the judge of the superior court having jurisdiction over the forfeiture as set out in this subsection; or

(3) Deliver such property to the sheriff or police chief of the county in which the seizure occurred, and the sheriff or police chief shall take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) When property is seized under this Code section, the sheriff or law enforcement officer seizing the same shall report the seizure, within 20 days thereof, to the district attorney of the judicial circuit having jurisdiction in the county where the seizure was made. Within 60 days from the date he or she receives notice of the seizure, the district attorney of the judicial circuit shall cause to be filed in the superior court of the county in which the property was seized or detained an in rem complaint for forfeiture of such property as provided for in this Code section. The proceedings shall be brought in the name of the state by the district attorney of the circuit in which the property was seized, and the complaint shall be verified by a duly authorized agent of this state in a manner required by the law of this state. The complaint shall describe the property; state its location; state its present custodian; state the name of the owner, if known to the duly authorized agent of this state; allege the essential elements of the violation upon which the forfeiture is based; and conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such a complaint, the court shall promptly cause process to issue to the present custodian in possession of the property described in the complaint, commanding him or her to seize the property described in the complaint and to hold that property for further order of the court. A copy of the complaint shall be served upon the owner or lessee, if known, and upon any person having a duly recorded security interest in or lien upon that property. If the owner or lessee is unknown, resides outside this state, departs this state, cannot after due diligence be found within this state, or conceals himself or herself so as to avoid service, notice of the proceedings shall be published once a week for two weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and from any sale of the property resulting therefrom but shall not constitute notice to any person having a duly recorded security interest in or lien upon such property and required to be served under this Code section unless that person is unknown, resides outside this state, departs this state, cannot after due diligence be found within this state, or conceals himself or herself to avoid service. An owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. Any such answer shall be filed within 30 days after the service of the summons and complaint. Where service is made by publication and personal service has not been made, an owner or interest holder shall file an answer within 30 days of the date of final publication. An answer shall be verified by the owner or interest holder under penalty of perjury. In addition to complying with the general rules applicable to an answer in civil actions, the answer shall set forth:

(1) The caption of the proceedings as set forth in the complaint and the name of the claimant;

(2) The address at which the claimant will accept mail;

(3) The nature and extent of the claimant's interest in the property;

(4) The date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;

(5) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture;

(6) All essential facts supporting each assertion; and

(7) The precise relief sought.

If at the expiration of the period set forth in this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section.

If an answer is filed, a hearing shall be held within 60 days after service of the complaint unless continued for good cause and shall be held by the court without a jury. If the court determines that a claimant defending the complaint knew or by the exercise of ordinary care should have known that the property was to be used for an unlawful purpose subjecting it to forfeiture under this Code section, the court shall order the disposition of the seized property as provided in this Code section and that claimant shall have no claim upon the property or proceeds from the sale thereof.

(f)(1) When property is forfeited under this Code section, the judge of the superior court of the county where the seizure was made or of the county in which it can be proven that the crime was committed may dispose of the property by issuing an order to:

(A) Retain it for official use by any agency of this state or any political subdivision thereof;

(B) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including but not limited to the expenses of seizure, maintenance of custody, advertising, and court costs; or

(C) Require the sheriff or police chief of the county in which the seizure occurred to take custody of the property and remove it for disposition in accordance with law.

(2)(A) Money, currency, or proceeds which are realized from the sale or disposition of forfeited property shall after satisfaction of the interest of secured parties and after payment of all costs vest in the local political subdivision whose law enforcement officers seized it. If the property was seized by a municipal law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that municipality. If the property was seized by a county law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in that county. If the property was seized by joint action of a county law enforcement agency and a municipal law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the

property shall vest in that county and that municipality and shall be divided equally between the county and municipality. If the property was seized by a state law enforcement agency, then the money, currency, or proceeds realized from the sale or disposition of the property shall vest in the county where the condemnation proceedings are filed. Except as otherwise provided in subparagraph (B) of paragraph (1) of this subsection for payment of all costs, the local government in which the money, currency, or proceeds realized from the forfeited property vests shall expend or use such funds or proceeds received for any official law enforcement purpose except for the payment of salaries or rewards to law enforcement personnel, at the discretion of the chief officer of the local law enforcement agency, or to fund victim-witness assistance programs. Such property shall not be used to supplant any other local, state, or federal funds appropriated for staff or operations.

(B) Any local law enforcement agency receiving property under this subsection shall submit an annual report to the local governing authority. The report shall be submitted with the agency's budget request and shall itemize the property received during the fiscal year and the utilization made thereof."

SECTION 4.

Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is amended by revising paragraph (9) of subsection (a) of Code Section 16-8-12, relating to penalties for violation of Code Sections 16-8-2 through 16-8-9, as follows:

"(9) Notwithstanding the provisions of paragraph (1) of this subsection, if the property of the theft was ~~ferrous metals or~~ regulated metal property, as such ~~terms are~~ term is defined in Code Section 10-1-350, and the aggregate amount of such property, in its original and undamaged condition, exceeds \$500.00, by imprisonment for not less than one nor more than five years, a fine of not more than \$5,000.00, or both."

SECTION 5.

Siad title is further amended by revising Code Section 16-8-12, relating to penalties for violation of Code Sections 16-8-2 through 16-8-9, by adding a new subsection to read as follows:

"(d)(1) If the property of the theft was regulated metal property, as such term is defined in Code Section 10-1-350, the clerk of the court in which a person is convicted a second or subsequent time within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person

convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long; shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, the name and address of the convicted person, the date, time, and place of arrest, and the disposition of the case; and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed \$25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith."

SECTION 6.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is amended by adding a new Code section to read as follows:

"40-5-57.3.

(a) The driver's license of any person convicted for a second or subsequent offense of:

(1) Theft by taking in violation of Code Section 16-8-2, theft by conversion in violation of Code Section 16-8-4, or theft by receiving stolen property in violation of Code Section 16-8-7 if the subject of the theft was regulated metal property, as such term is defined in Code Section 10-1-350;

(2) Criminal damage to property in the first degree in violation of paragraph (2) of subsection (a) of Code Section 16-7-22; or

(3) A criminal violation of Article 14 of Chapter 1 of Title 10

shall be suspended as provided in this Code section. The person shall submit the driver's license to the court upon conviction and the court shall forward the driver's license to the department.

(b)(1) A first suspension of a driver's license under this Code section shall be for a period of six months.

(2) A second or subsequent suspension of a driver's license under this Code section shall be for a period of one year.

241 (c) After the suspension period and when the person pays a restoration fee of \$200.00 or,
242 when processed by mail, \$210.00, the suspension shall terminate and the department shall
243 return the person's driver's license to such person."

244 **SECTION 7.**

245 This Act shall become effective on January 1, 2010, and shall apply to all offenses
246 committed on or after such date.

247 **SECTION 8.**

248 All laws and parts of laws in conflict with this Act are repealed.